

**Title 4**  
**PROCUREMENT CODE**

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## Chapter 4.04

### GENERAL PROVISIONS

#### Sections:

- 4.04.010 Title, purposes and rules of construction.**
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#### **4.04.010 Title, purposes and rules of construction.**

A. Title. The ordinance codified in this title may be cited as “The 1992 Procurement Code of the Metropolitan Government” and is sometimes referred to hereafter as the “code.”

B. Interpretation. This code shall be construed and applied to promote its underlying purposes and policies.

C. Purposes and Policies. The underlying purposes and policies of this code are:

1. To simplify, clarify and modernize the law governing procurements by the metropolitan government of Nashville and Davidson County, referred to hereafter as metropolitan government”;
2. To permit the continued development of procurement policies and practices;
3. To provide for increased public confidence in the procedures followed in public procurement;
4. To ensure the fair and equitable treatment of all persons who deal with the procurement system of the metropolitan government;
5. To provide increased economy in the metropolitan government’s procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the metropolitan government;
6. To foster effective broad-based competition within the free enterprise system while ensuring procurements meeting the needs of the metropolitan government; and
7. To provide safeguards for the maintenance of a procurement system of quality and integrity.

D. Singular-Plural and Gender Rules. In this code, unless the context requires otherwise:

1. Words in the singular number include the plural and those in the plural include the singular, and

2. Words of a particular gender include any gender and the neuter and when the sense so indicates, words of the neuter gender may refer to any gender. (Ord. 92-210 § 1 (1-101), 19920

#### **4.04.020 Application of this code.**

A. General Application. This code applies only to contracts solicited or entered into after the effective date of the ordinance codified in this title unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

B. Application to Metropolitan Government Procurements. Except as provided in subsection C hereof, this code shall apply to the procurement and disposal of all necessary and appropriate supplies, materials, equipment, other personal property, contractual services, insurance and surety bonds for the use of the Metropolitan Government and its departments, boards, commissions, officers and agencies. Nothing in this code or in regulations promulgated hereunder shall prevent any entity of Metropolitan Government from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement, where otherwise authorized by law.

C. Exempted Boards and Agencies. The following agencies of metropolitan government are exempted from compliance with this code:

1. The electric power board;
2. The metropolitan development and housing agency;
3. The metropolitan board of public education;
4. The metropolitan transit authority;
5. The hospital authority of the metropolitan government of Nashville and Davidson County; and
6. The metropolitan department of law shall be exempt from the requirements of this code in the acquisition of expert witness, consultant, additional counsel, court reporter, and other services required in litigation or other legal representation of the metropolitan government.

D. Exempt Agencies May Request Assistance. Any of the administrative departments, boards or commissions of the metropolitan government which are excluded from the purchasing procedures established by the Metropolitan Charter of this code, or which may hereafter be so excluded, may request the purchasing agent, as agent for such administrative department, board or commission, to perform the purchasing functions prescribed by the Metropolitan Charter or this code on behalf of such administrative department, board or commission; provided, that such request be made in writing by the director of such administrative department and approved by the mayor, or, if a board or commission, by resolution of such board or commission approved by the mayor. A copy of all such

requests and resolutions, when approved by the mayor, shall be delivered to the purchasing agent as his authority to act as purchasing agent for the administrative board or commission, and a copy of such request, as approved by the mayor, shall be filed with the metropolitan clerk. (Ord. 99-1528 § 1, 1999; Ord. 92-210 § 1 (1-102), 1992)

#### **4.04.030 Severability.**

If any provision of this code or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable. (Ord. 92-210 § 1 (1-103), 1992)

#### **4.04.040 Determinations retained in contract files.**

Written determinations required by this code shall be retained in the appropriate contract file in the purchasing division and may be inspected there by the public as permitted by law. (Ord. 92-210 § 1 (1-201), 1992)

#### **4.04.050 Definitions.**

A. The words defined in this Section shall have the meanings set forth below wherever they appear in this code unless:

1. The context in which they are used clearly requires a different meaning; or
2. A different definition is prescribed for a particular Article or provision.

B. The Standards Board may, by regulation, provide more specific definitions.

“Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

“Change order” means any written alteration in specifications, scope of construction, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract.

“Construction” means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

“Contract” means all types of metropolitan government agreements and contracts, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

“Contractor” means any person having a contract with the metropolitan government.

“Data” means recorded information, regardless of form or characteristic.

“Designee” means a duly authorized representative of a person holding a superior position.

“Electronic” means electrical, digital, magnetic, optical, electromagnetic, and any similar technology.

“Employee” means an individual drawing a salary as other compensation for personal services from the metropolitan government, whether elected or not, but does not include independent contractors.

“May” denotes the permissive.

“Person” means any business, individual, union, committee, club, other organization or group of individuals.

“Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

“Public notice” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and Web sites(s) designated by the metropolitan government and maintained for that purpose.

“Purchasing agent” means the head of the Division of Purchases created and provided for by the Metropolitan Charter, Section 8.108.

“Regulation” means a governmental body’s statement, having general or particular applicability and future effect, designed to implement, interpret or prescribe policy, or describing organization, procedure of practice requirements which have been filed with the metropolitan clerk.

“Services” means the furnishing of labor, time or effort by a contractor, not primarily involving the delivery of a specific end product other than reports. This term shall not include employment agreements.

“Shall” denotes the imperative.

“Signature” means a manual or electronic identifier or the electronic result of an authentication technique, attached to or logically associated with a record, that is intended by the person using it to have the same force and effect as a digital signature.

“Supplies” means all property, including but not limited to equipment and materials.

“Using agency” means any department, board, commission or agency of the metropolitan government which uses any supplies, services, or construction procured under this code.

“Written” or “in writing” means the product of any method of forming characters on paper, other materials, or

viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored. (Ord. 2002-1232 § 3 (part), 2002; Ord. 92-210 § 1 (1-301), 1992)

**4.04.060            Authorization for the use of  
                         electronic transmissions.**

The use of electronic media, including acceptance of electronic signatures is authorized, consistent with the metropolitan government's applicable legal and regulatory requirements for use of such media, so long as the guidance provides for:

1. Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
2. Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying. (Ord. 2002-1232 § 3 (part), 2002)

**4.04.070            Public access to procurement  
                         information.**

Procurement information shall be public records, open to inspection and copying during normal business hours. Information on a particular procurement shall be open to the public only after bid evaluation. In accordance with regulations of the Standards Board, the Purchasing Division may charge a reasonable cost for copying records. (Ord. 92-210 § 1 (1-401), 1992)

## Chapter 4.08

### PROCUREMENT ORGANIZATION

#### Sections:

- 4.08.010 Procurement standards board—  
Creation and membership—  
Administration support.**
- 4.08.020 Procurement standards board—  
Powers and duties.**
- 4.08.030 Division of purchases.**
- 4.08.040 Purchasing agent—Powers and  
duties.**
- 4.08.050 Purchasing agent—Additional  
duties.**
- 4.08.060 Delegation of authority by the  
purchasing agent.**
- 4.08.070 Centralization of procurement  
authority.**
- 4.08.080 Authority to contract for  
professional services.**
- 4.08.090 Procurement regulations—  
Applicability.**
- 4.08.100 Collection of data concerning  
public procurement.**
- 4.08.110 Advisory groups.**
- 4.08.010 Procurement standards board—  
Creation and membership—  
Administration support.**
- A. Creation of the metropolitan government procurement standards board. There is hereby created the metropolitan government procurement standards board, referred to hereafter as the “standards board.”
- B. Membership of the standards board. The standards board shall be composed of five members as follows:
1. The director of finance of metropolitan government, who shall serve as chairperson of the board, and who may be represented by a designee;
  2. The director of law of metropolitan government, who may be represented by a designee;
  3. The head of another department of metropolitan government, to be appointed to the board by the mayor;
  4. Two outside members, not employees or elected officials of metropolitan government, appointed by the mayor and confirmed by a majority vote of the whole membership of the council. These members shall serve a term of three years, respectively, or until a successor has been duly appointed and qualified; except, of the members first appointed, one shall serve for a term of two years and one shall serve for a term of three years.

5. Provided, however, of the five members, one shall be a female and one shall be a Black, provided however, that a Black female shall not satisfy the requirement of one female and one Black, and shall meet the requirement of only one such position.

C. Reappointment and Vacancies. Outside members of the standards board may be reappointed. Any vacancy occurring during the unexpired term of any outside member shall be filled in the manner prescribed herein for the original appointment and shall be for the unexpired portion of the term. In the event of a vacancy in the positions of director of finance or director of law, the respective acting director shall serve until the vacancy is filled.

D. Administrative Support. The director of finance shall provide such services and administrative support as the standards board may request from time to time. (Amdt. 2 to Ord. 92-210, 4/7/92; Ord. 92-210 § 1 (2-101), 1992)

#### **4.08.020 Procurement standards board— Powers and duties.**

A. The standards board shall have the authority and responsibility to promulgate regulations, consistent with this code, governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by the metropolitan government and all its departments, boards, commissions, officers and agencies, except those set out in Section 4.04.020(C) of this code.

B. The standards board shall consider and decide matters of policy within the provisions of this code, including those referred to it by the purchasing agent. The standards board shall have the power to audit and monitor the implementation of its regulations and the requirements of this code, but shall not exercise authority over the award or administration of any particular contract or over any dispute, claim or litigation pertaining thereto. (Ord. 92-210 § 1 (2-102), 1992)

#### **4.08.030 Division of purchases.**

The division of purchases in the department of finance shall consist of the purchasing agent and such other officers and employees, organized into such units or sections as recommended by the purchasing agent and approved by the director of finance. The purchasing agent shall be responsible for the general management and control of the division and shall assign the duties and responsibilities of all employees of the division. (Ord. 92-210 § 1 (2-102), 1992)

#### **4.08.040 Purchasing agent—Powers and duties.**

A. Principal Contracting Officer of the Metropolitan Government. The purchasing agent shall serve as the central procurement officer of the metropolitan government.

B. Power to Adopt Operational Procedures. Consistent with the provisions of this code and regulations that may be promulgated by the standards board, the purchasing agent may adopt operational procedures governing the internal operations of the purchasing division, subject to the approval of the director of finance.

C. Duties. Except as otherwise specifically provided by this code, the purchasing agent shall, in accordance with regulations promulgated by the standards board:

1. Procure or supervise the procurement of all supplies, services, and construction needed by the metropolitan government;

2. Sell, trade, or otherwise dispose of surplus supplies belonging to the metropolitan government;

3. Establish and maintain programs for the inspection, testing and acceptance of supplies, services and construction;

4. With the approval of the director of finance and the mayor, and after consultation with the heads of the using agencies concerned, establish and enforce standard specifications for all supplies, materials and equipment required by the metropolitan government which the purchasing agent has authority to purchase or lease;

5. Prescribe the time of making requisitions for such supplies, materials and equipment and the future period which such requisitions are to cover; and

6. Submit reports as requested by the director of finance and the standards board. (Ord. 2002-1232 § 3 (part), 2002; Ord. 92-210 § 1 (2-202), 1992)

#### **4.08.050 Purchasing agent—Additional duties.**

Unless the director of finance assigns the following duties to some other division in his department, the purchasing agent shall also, in accordance with regulations promulgated by the standards board:

A. Inspect or cause to be inspected all deliveries of such supplies, materials and equipment and cause tests to be made when necessary in order to determine their quality, quantity and conformance with specifications;

B. Determine whether needs for specific supply items and categories of supplies can best be met through maintenance of inventory or the establishment and use of term contracts; and

C. Transfer to or between using agencies, with the approval of the director of the public property administration, and sell or trade in supplies, materials or equipment determined by him, after consultation with the heads of the

using agencies concerned, to be surplus, obsolete or unused. (Ord. 2002-1232 § 3 (part), 2002; Ord. 92-210 § 1 (2-203), 1992)

#### **4.08.060 Delegation of authority by the purchasing agent.**

Subject to the regulations of the standards board, the purchasing agent may delegate authority to officers and employees of the division of purchases or to any department, agency or official and may set conditions for such delegation. (Ord. 92-210 § 1 (2-204), 1992)

#### **4.08.070 Centralization of procurement authority.**

Except as otherwise provided in this code, the division of purchases shall, in accordance with regulations promulgated by the standards board, procure for the use of the metropolitan government and its departments, boards, commissions, officers and agencies all necessary and appropriate supplies, materials, equipment, other personal property, contractual services, insurance and surety bonds. (Ord. 92-210 § 1 (2-301), 1992)

#### **4.08.080 Authority to contract for professional services.**

A. General Authority. Contracts for legal services, medical services, accounting services, fiscal agents, financial advisors or advisory services, educational consultants, architectural services, engineering services, and similar services by professional persons or groups of high ethical standards, shall not be based on competitive sealed bids, but shall be awarded on the basis of recognized competence and integrity.

B. Contracts for Professional Services as described above shall be awarded pursuant to regulations adopted by the standards board and shall be approved by the mayor. The board's regulations may exempt such services from the requirements of centralized purchasing.

C. Contracts for Legal Services. Services of special counsel shall be obtained pursuant to Section 8.607 of the Metropolitan Charter. No contract for the services of legal counsel may be awarded without the approval of the director of law, except for special counsel for the metropolitan council.

D. Independent Audit Firm. The services of an independent audit firm shall be obtained pursuant to Section 6.15 of the Metropolitan Charter.

E. Contracts for information management services, including, but not limited to, computer program analyst services shall, be procured through a request for proposals process. The request for proposals process will invite prospective proposers to participate and will indicate the ser-

vice requirements and the factors used for evaluating the proposals. Such factors shall include cost, vendor's qualifications and any additional factor or factors deemed relevant by the procuring entity for the procurement of the service; cost is not to be the sole criteria for evaluation. The contract for such services will be awarded to the best evaluated, responsive proposer. (Ord. 92-456 § 1, 1992; Ord. 92-210 § 1 (2-302), 1992)

**4.08.090            Procurement regulations—  
                          Applicability.**

A. Regulations. Regulations promulgated by the standards board shall not become effective until they have been on file with the metropolitan clerk for thirty days.

B. Regulations Shall Not Change Existing Contract Rights. No regulation promulgated by the standards board shall change or modify any commitment, right or obligation of the metropolitan government or of a contractor under a contract in existence on the effective date of such regulation. (Ord. 92-210 § 1 (2-501), 1992)

**4.08.100            Collection of data concerning public  
                          procurement.**

The purchasing agent shall cooperate with the director of finance and the standards board in the preparation of statistical data concerning the procurement, use and disposition of all supplies, services and construction and shall employ such trained personnel as may be necessary to carry out this function. All using agencies of the metropolitan government shall furnish such reports as the purchasing agent may require concerning usage, needs and stocks on hand. The purchasing agent shall have authority to prescribe forms to be used by the using agencies in the requisitioning, ordering and reporting of supplies, services and construction. (Ord. 92-210 § 1 (2-501), 1992)

**4.08.110            Advisory groups.**

The standards board may establish an advisory group or groups who may conduct studies, research, analyses and make reports and recommendations with respect to subjects or matters within the jurisdiction of the standards board. The purchasing agent may appoint advisory groups to assist with respect to specifications or procurement in specific areas and with respect to any other matters within the authority of the purchasing agent. (Ord. 92-210 § 1 (2-502), 1992)

## Chapter 4.12

### SOURCE SELECTION AND CONTRACT FORMATION

#### Sections:

- 4.12.010 Definitions.
- 4.12.020 Methods of source selection.
- 4.12.030 Competitive sealed bidding.
- 4.12.040 Competitive sealed proposals.
- 4.12.050 Small purchases.
- 4.12.060 Sole source procurement.
- 4.12.070 Emergency procurements.
- 4.12.080 Utilities.
- 4.12.090 Purchases through state and other governments.
- 4.12.093 Intergovernmental cooperative purchasing.
- 4.12.095 Privatization contracts.
- 4.12.100 Cancellation of invitations to bid or requests for proposals.
- 4.12.110 Responsibility of bidders and offerors.
- 4.12.120 Prequalification of suppliers—  
Lists of established suppliers.
- 4.12.130 Cost or pricing data.
- 4.12.140 Types of contracts.
- 4.12.150 Term contracts.
- 4.12.160 Multi-year contracts.
- 4.12.170 Right to inspect plant.
- 4.12.180 Right to audit records.
- 4.12.190 Reporting of anticompetitive practices.
- 4.12.200 Retention of procurement records.
- 4.12.210 Reports of procurement actions.
- 4.12.220 Contracts relating to solid waste collection and disposal.

#### 4.12.010 Definitions.

“Competitive bidding” means:

#### Dollar Amount of Purchase Requirements

Up to \$999.99	One oral or written quotation required.
\$1,000 to \$3,999.99	A minimum of three verbal quotations required.

#### Dollar Amount of Purchase Requirements

\$4,000 to \$9,999.99	A minimum of three written quotations required.
\$10,000 and above	Competitive sealed bids or request for proposals.

The above dollar thresholds shall be adjusted each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for calendar year 2002. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the twelve-month period ending on August 31st of each calendar year.

“Established catalogue price” means the price included in a catalogue, price list, schedule or other form that:

1. Is regularly maintained by a manufacturer or contractor;
2. Is either published or otherwise available for inspection by customers; and
3. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

“Invitation to bid” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

“Multi-step sealed bidding” is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the metropolitan government and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.

“Purchase description” means the words used in a solicitation to describe the supplies, services or construction to be purchased and includes specifications attached to, or made a part of, the solicitation.

“Request for proposals” means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.



“Responsible bidder or offeror” means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

“Responsive bidder” means a person who has submitted a bid which conforms in all material respects to the invitation to bid. (Ord. 2002-1232 § 3 (part), 2002; Ord. 95-1428 § 1, 1995; Ord. 92-210 § 1 (3-101), 1992)

#### **4.12.020 Methods of source selection.**

Unless otherwise authorized by law, all metropolitan government contracts shall be awarded by competitive sealed bidding, pursuant to Section 4.12.030 of this code. Competitive sealed bidding, except as provided in:

- A. Section 4.08.080, Authority to contract for professional services;
- B. Section 4.12.040, Competitive sealed proposals;
- C. Section 4.12.050 Small purchases;
- D. Section 4.12.060 Sole source procurement;
- E. Section 4.12.070, Emergency procurements;
- F. Section 4.12.080 Utilities;
- G. Section 4.12.090 Purchases through state and other governments. (Ord. 92-210 § 1 (32-2012), 1992)

#### **4.12.030 Competitive sealed bidding.**

A. Conditions for Use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 4.12.020 of this code, Methods of source selection.

B. Invitation to Bid. An invitation to bid shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

C. Public Notice. Adequate public notice of the invitation to bid shall be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with regulations promulgated by the standards board. The standards board may require different types of public notice on the basis of the size of the purchase or contract, or the type of supplies, services or construction. Such notice may include, but is not limited to, publication in a newspaper of general circulation a reasonable time prior to bid opening, mailing to suppliers on a list of established suppliers, and/or posting notice.

D. Bid Opening. Bids shall be publicly opened in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be read aloud and recorded and the record shall be open to public inspection.

E. Bid Acceptance and Bid Evaluation. Bids shall be accepted without alteration or correction, except as author-

ized in this code. Bids shall be evaluated based on the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation to bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation to bid.

F. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations promulgated by the standards board. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the metropolitan government or fair competition shall be permitted. In accordance with regulations of the standards board, the purchasing division may correct mathematical errors. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the purchasing agent.

G. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation to bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. The standards board shall adopt regulations governing the use of multi-step sealed bidding and establishing procedures. Discussions conducted for the purposes of facilitating understanding of technical offers or specifications may result in the obtaining of supplemental information, amendments of technical offers, and/or amendments of the specifications.

H. Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

I. Rejection. The purchasing agent may reject any and all bids received for purchases or sales. (Ord. 92-210 § 1 (3-202), 1992)

#### **4.12.040 Competitive sealed proposals.**

A. Conditions of Use. When, under regulations promulgated by the standards board, the purchasing agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the metropoli-

tan government, a contract may be entered into by competitive sealed proposals. The standards board may provide by regulation that it is either not practical or not advantageous to the metropolitan government to procure specified types of supplies, services or construction by competitive sealed bidding.

B. Request for Proposals. Proposals shall be solicited through a request for proposals.

C. Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 4.12.030(C), Competitive sealed bidding, public notice.

D. Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations promulgated by the standards board and shall be open for public inspection after contract award.

E. Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.

F. Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals and under regulations promulgated by the standards board, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

G. Award. Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the metropolitan government taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. (Ord. 92-210 § 1 (3-203), 1992)

#### **4.12.050 Small purchases.**

Any procurement not exceeding the sum of one thousand dollars or such greater amount as may be permitted by the Metropolitan Charter may be made in accordance with the small purchase procedures promulgated by the standards board. "Split bidding," or the artificial division

of procurement requirements so as to constitute a small purchase, is prohibited. (Ord. 92-210 § 1 (3-204), 1992)

#### **4.12.060 Sole source procurement.**

A contract may be awarded for a supply, service or construction item without competition when, under regulations promulgated by the standards board, the purchasing agent determines in writing that there is only one source for the required supply, service or construction item. The standards board may, by regulation, establish specific categories of supplies, services, or construction items as sole source items. (Ord. 92-210 § 1 (3-205), 1992)

#### **4.12.070 Emergency procurements.**

Notwithstanding any other provision of this code, the purchasing agent may make or authorize others to make, emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations promulgated by the standards board; provided that such emergency procurements shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Any department head or other official who makes an emergency purchase without following the regulations of the standards board may be held personally liable for such purchase. (Ord. 92-210 § 1 (3-206), 1992)

#### **4.12.080 Utilities.**

Subject to the rules of the standards board, the purchasing agent shall purchase or contract for all telephone or telecommunications, electricity, gas, power, water, postal, and other services for which a rate for the use thereof has been established by a public authority in such manner as the purchasing agent deems to be in the best interest of the metropolitan government. (Ord. 92-210 § 1 (3-207), 1992)

#### **4.12.090 Purchases through state and other governments.**

A. Purchase by State. As authorized by state law and in accordance with regulations of the standards board, the purchasing agent may request the State Department of General Services to purchase supplies and equipment for the metropolitan government.

B. Purchase from State Contracts. As authorized by state law and in accordance with regulations of the standards board, the purchasing agent may purchase, without public advertisement or competitive bidding, under the provisions of contracts or price agreements entered into by the State Department of General Services and open federal

contracts in compliance with Tennessee Code Annotated Section 12-3-1001(c).

C. **Purchase of Secondhand Articles from Government.** As authorized by state law and in accordance with regulations of the standards board, the purchasing agent may purchase from any federal, state or local governmental unit or agency secondhand articles or equipment or other materials, supplies, commodities and equipment without public advertising and competitive bidding.

D. **Purchase for or from Local Governmental Units.** As authorized by state law and in accordance with regulations of the standards board, the purchasing agent may, upon request, purchase supplies, equipment or services for any other municipality, county, utility district or other local governmental unit. The cost of the purchase shall be borne by the local governmental entity for whom the purchase was made. In accordance with regulations of the standards board, the purchasing agent may request other local governments to purchase supplies, equipment or services for the metropolitan government.

E. The purchasing agent is authorized to enter into purchasing or contracting cooperatives with other governmental agencies and authorities outside the jurisdictional boundaries of the State of Tennessee, whether state or federal, to the extent permitted by Tennessee Code Annotated Section 12-9-104. (Ord. 98-1326 § 1, 1998; Ord. 97-1000 § 1, 1997; Ord. 92-210 § 1 (3-208), 1992)

#### **4.12.093 Intergovernmental cooperative purchasing.**

To the extent permitted by state law, the purchasing agent is authorized to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more other local governments in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between local governments. Where the participants in a joint or multiparty contract are required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements. (Ord. 99-1804 § 1, 1999)

#### **4.12.095 Privatization contracts.**

No contract which provides for privatizing governmental services shall become effective unless and until such contract has been approved by resolution adopted by the council by twenty-one affirmative votes. For the purpose of this section "privatizing governmental services" shall mean any services or work performed by employees of the metropolitan government as of September 1, 1995 which

services, if performed by nongovernmental entities, (1) would result in the termination, relocation, transfer or furloughing of more than two employees of the metropolitan government who were employed to provide such services as of September 1, 1995 or (2) has a value or cost of one hundred thousand dollars or more annually, provided however, such term shall not include professional services. Further, any contracts of metropolitan government entered into prior to September 1, 1995 may be renewed or extended, the provisions of this section to the contrary notwithstanding. (Ord. 95-33 § 1, 1995)

#### **4.12.100 Cancellation of invitations to bid or requests for proposals.**

An invitation to bid, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, when it is in the best interests of the metropolitan government in accordance with regulations promulgated by the standards board. (Ord. 92-210 § 1 (2-301), 1992)

#### **4.12.110 Responsibility of bidders and offerors.**

A. **Determination of Nonresponsibility.** A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the standards board. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. (Ord. 92-210 § 1 (3-401), 1992)

#### **4.12.120 Prequalification of suppliers—Lists of established suppliers.**

A. The standards board may, by regulation, allow the prequalification of prospective suppliers for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

B. In accordance with regulations adopted by the standards board, the purchasing agent may maintain lists of established suppliers. Those regulations may allow the maintenance of lists by type of materials or services to be furnished or by other categories, may authorize selective mailings of invitations to bid based on specific criteria, and may provide for removal from the lists. (Ord. 92-210 § 1 (3-402), 1992)

#### **4.12.130 Cost or pricing data.**

The standards board may, by regulation, establish requirements for the furnishing of cost or pricing data in

situations, including change orders or contract modification, where analysis of the proposed price is essential to determine that the price is reasonable and fair. Such data shall not be required where prices are based on adequate competition, established catalogue or market prices, or are regulated. (Ord. 92-210 § 1 (3-403), 1992)

#### **4.12.140 Types of contracts.**

Subject to the limitations of this section, any type of contract which will promote the best interest of the metropolitan government may be used; provided that the use of a cost-plus-a-percentage-of-cost contract for the purchase of goods or supplies is prohibited. A cost-reimbursement contract may be used only when such contract is likely to be less costly to the metropolitan government than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract. (Ord. 92-210 § 1 (3-501), 1992)

#### **4.12.150 Term contracts.**

A. "Term contract" means a contract in which a source or sources of supply are established for a specified period of time at an agreed upon unit price(s).

B. More than one term contract may be let for the supply of any given class or type of supplies, equipment or service.

C. After term contracts have been awarded, the purchasing agent shall certify the sources of supply and the contract price for the various supplies, material, equipment and services so contracted for. The departments, agencies, boards and commissions of metropolitan government shall purchase from the source of supply contracts, unless authorized elsewhere in this code or by regulations of the standards board. (Ord. 92-210 § 1 (3-502), 1992)

#### **4.12.160 Multi-year contracts.**

A. Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the metropolitan government provided the term of the contract and any renewals or extensions do not exceed sixty months. The term of the contract and conditions of renewal or extension, if any, must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. Use. The standards board may, by regulation, establish conditions for use of multi-year contracts, set maximum terms for contracts for types of supplies, services, or construction items, and prescribe specific contract provi-

sions including, but not limited to, cancellation by the metropolitan government at any time with reasonable notice.

C. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. (Ord. 92-210 § 1 (3-503), 1992)

#### **4.12.170 Right to inspect plant.**

The metropolitan government may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the metropolitan government. (Ord. 92-210 § 1 (3-601), 1992)

#### **4.12.180 Right to audit records.**

A. Audit of Cost or Pricing Data. The metropolitan government may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to regulations promulgated pursuant to Section 4.12.130, Cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

B. Contract Audit. The metropolitan government shall be entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is authorized in writing. (Ord. 92-210 § 1 (3-602), 1992)

#### **4.12.190 Reporting of anticompetitive practices.**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the director of law. (Ord. 92-210 § 1 (3-701), 1992)

#### **4.12.200 Retention of procurement records.**

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the standards board, the public records commission, and the director of law. All retained

documents shall be made available to the director of law or a designee upon request and proper receipt therefor. (Ord. 92-210 § 1 (3-702), 1992)

**4.12.210            Reports of procurement actions.**

The standards board shall, by regulation, determine the content and frequency of various reports regarding procurement activity to be provided by the purchasing agent. (Ord. 92-210 § 1 (3-703), 1992)

**4.12.220            Contracts relating to solid waste collection and disposal.**

No contract providing for the collection, transportation and/or disposal of solid waste, whether temporary or permanent, which contracts provide for annual payment of five hundred thousand dollars or more, including unit price contracts, may be entered into unless and until such contract has been approved by resolution duly adopted by the council by twenty-one affirmative votes. (Amdt. 1 to Ord. 94-966, 4/19/94: Ord. 94-966 § 1, 1994)

## **Chapter 4.16**

### **SPECIFICATIONS**

#### **Sections:**

- 4.16.010 Definitions.**
- 4.16.020 Duties of the standards board.**
- 4.16.030 Duties of the purchasing agent.**
- 4.16.040 Exempted items.**
- 4.16.050 Relationship with using agencies.**
- 4.16.060 Economy and competition.**
- 4.16.070 Specifications prepared by architects, engineers and consultants.**
- 4.16.080 Energy efficiency standards and life cycle costs.**

#### **4.16.010 Definitions.**

As used in this chapter:

“Specification” means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item. It may include a description of any requirement for inspection, testing or preparing a supply, service or construction item for delivery. (Ord. 92-210 § 1 (4-101), 1992)

#### **4.16.020 Duties of the standards board.**

The standards board shall promulgate regulations governing the preparation, maintenance and content of specifications for supplies, services and construction required by the metropolitan government. (Ord. 92-210 § 1 (4-201), 1992)

#### **4.16.030 Duties of the purchasing agent.**

The purchasing agent shall review the specifications submitted by departments in order to ensure that they identify minimum requirements, allow for maximum practicable competition, identify standards to be used in verifying compliance, and provide for an equitable award at the lowest possible cost. To the extent practicable, specifications shall be written in terms of performance and outcomes. (Ord. 2002-1232 § 3 (part), 2002: Ord. 92-210 § 1 (4-202), 1992)

#### **4.16.040 Exempted items.**

Specifications for supplies, services or construction items procured under Section 4.08.080, Authority to contract for professional services, or exempted pursuant to the Charter, the code, or regulations adopted pursuant to this code, may be prepared by the purchasing agent. (Ord. 92-210 § 1 (4-203), 1992)

#### **4.16.050 Relationship with using agencies.**

The purchasing agent shall obtain expert advice and assistance from personnel of the using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and/or utilize its own specifications. Utilization of any specifications prepared by a using agency shall be subject to the approval of the purchasing agent. (Ord. 92-210 § 1 (4-204), 1992)

#### **4.16.060 Economy and competition.**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the metropolitan government's needs and shall not be unduly restrictive. (Ord. 92-210 § 1 (4-205), 1992)

#### **4.16.070 Specifications prepared by architects, engineers and consultants.**

The requirements of this chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, draftsmen, and consultants for public contracts. (Ord. 92-210 § 1 (4-206), 1992)

#### **4.16.080 Energy efficiency standards and life cycle costs.**

To the extent required by state law, the metropolitan government shall adopt and incorporate into its procurements policies, through regulations of the standards board, energy efficiency standards and life cycle costing employed by the state in its procurement policies. (Ord. 92-210 § 1 (4-207), 1992)

## Chapter 4.20

### PROCUREMENT OF CONSTRUCTION CONTRACTS

#### Sections:

- 4.20.010**      **Alternative methods of construction contracting management—Standards.**
  - 4.20.020**      **Bid security.**
  - 4.20.030**      **Contract performance and payment bonds.**
  - 4.20.040**      **Bond forms and copies.**
  - 4.20.050**      **Contract clauses and their administration.**
  - 4.20.060**      **Fiscal responsibility.**
  - 4.20.070**      **Declaration of policy—Payment of prevailing wages required.**
  - 4.20.080**      **Prevailing wages—Basis.**
  - 4.20.090**      **Prevailing wages—Rate schedules to be specification for work—Posting.**
  - 4.20.100**      **Payroll records—Contractor responsibility.**
  - 4.20.110**      **Violation of Title 4 provisions—Penalty.**
  - 4.20.120**      **Effect of federal action on wage determinations.**
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- 4.20.010**      **Alternative methods of construction contracting management—Standards.**

The standards board shall promulgate regulations providing for as many alternative methods of construction management as it may determine to be feasible. These regulations shall:

A. Set forth criteria to be used in determining which method of contracting management is to be used for a particular project; and

B. Grant to the purchasing agent the discretion to select the appropriate method of construction contracting management for a particular project. (Ord. 92-210 § 1 (5-101), 1992)

#### **4.20.020**      **Bid security.**

A. Requirement for Bid Security. Bid security shall be required for all competitive sealed bids for construction contracts when the price is estimated by the purchasing agent to exceed an amount established by the standards board. Bid security shall be a bond provided by a surety company authorized to do business in this state or the equivalent in cash or otherwise supplied in a form satisfactory to the purchasing agent in accordance with regulations of the standards board. Nothing herein prevents the re-

quirement of such bonds on construction contracts under the amount set by the standards board when the circumstances warrant.

B. Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent of the amount of the bid. The standards board, by regulation, may establish additional appropriate levels of bid security.

C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation to bid requires security, noncompliance requires that the bid be rejected unless, pursuant to standards board regulations, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

D. Withdrawal of Bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Section 4.12.030(F), Competitive sealed bidding, correction or withdrawal of bids, cancellation of awards. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security. (Ord. 92-210 § 1 (5-201), 1992)

#### **4.20.030**      **Contract performance and payment bonds.**

A. When Required—Amounts. When a construction contract is awarded in excess of one thousand dollars, the following bonds or security shall be delivered to the metropolitan government and shall become binding on the parties upon the execution of the contract:

1. A performance bond satisfactory to the metropolitan government, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the metropolitan government, in an amount equal to one hundred percent of the price specified in the contract; and

2. A payment bond satisfactory to the metropolitan government, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the metropolitan government for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the price specified in the contract.

B. Reduction of Bond Amounts. The standards board may promulgate regulations that authorize the purchasing agent to reduce the amount of performance and payment bonds to fifty percent of the contract price for each bond.

C. Authority to Require Additional Bonds. Nothing in this section shall be construed to limit the authority of the metropolitan government to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection A of this section. (Ord. 92-210 § 1 (5-202), 1992)

#### **4.20.040 Bond forms and copies.**

A. Bond Forms. The standards board shall promulgate by regulation the form of the bonds required by Sections 4.20.020 through 4.20.040.

B. Certified Copies of Bonds. Any person may request and obtain from the metropolitan government a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of the bond shall be prima facie evidence of the contents, execution and delivery of the original. (Ord. 92-210 § 1 (5-303), 1992)

#### **4.20.050 Contract clauses and their administration.**

A. Contract Clauses. The standards board shall promulgate regulations requiring the inclusion in metropolitan government construction contracts of clauses providing for adjustment in prices, time of performance or other contract provisions, as appropriate, and covering the following subjects:

1. The unilateral right of the metropolitan government to order in writing:

a. Changes in the work within the scope of the contract, and

b. Changes in the time of performance of the contract that do not alter the scope of the contract work;

2. Variations occurring between estimated quantities of work in a contract and actual quantities;

3. Suspension of work ordered by the metropolitan government; and

4. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the standards board need not be included in a contract:

a. When the contract is negotiated,

b. When the contractor provides the site or design, or

c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price Adjustments.

1. Adjustment in price pursuant to clauses promulgated under subsection A of this section shall be computed in one or more of the following ways:

a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable,

b. By unit price specified in the contract or subsequently agreed upon,

c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon,

d. In such other manner as the contracting parties mutually agree, or

e. In the absence of agreement by the parties, by a unilateral determination by the metropolitan government of the costs attributable to the events or situations under such clauses with adjustments of profits and fee, all as computed by the metropolitan government in accordance with applicable sections of the regulations of the standards board;

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to regulations promulgated pursuant to the provisions of Section 4.12.130 Cost of pricing data.

C. Additional Contract Clauses. The standards board shall promulgate regulations requiring the inclusion in metropolitan government construction contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;

2. Specified excuses for delay or nonperformance;

3. Termination of the contract for default; and

4. Termination of the contract in whole or in part for the convenience of the metropolitan government.

D. Modification of Required Clauses. The purchasing agent may vary the clauses promulgated by the standards board under subsections A and C of this section for inclusion in any particular metropolitan government construction contract, provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the invitation for bids or request for proposals. (Ord. 92-210 § 1 (5-401), 1992)

#### **4.20.060 Fiscal responsibility.**

Every contract modification, change order, or contract price adjustment under a construction contract with the metropolitan government shall be subject to prior written certification by the director of finance that there is a sufficient unencumbered appropriation and allotment balance to cover said obligation. (Ord. 92-210 § 1 (5-402), 1992)

#### **4.20.070 Declaration of policy—Payment of prevailing wages required.**

It is declared to be the policy of the metropolitan government that not less than prevailing wage rates be paid workmen on all building and construction projects wherein any funds of the metropolitan government are expended for such purposes. (Ord. 92-210 § 1 (5-501), 1992)

#### **4.20.080 Prevailing wages—Basis.**

Any person entering into any contractual agreement with the metropolitan government for any type of building



or construction work wherein any funds of the metropolitan government may be appropriated or expended for such building or construction work shall pay not less than the prevailing wage rates for all types and classifications of such work as established for the county by the United States Department of Labor under U.S.C. 40 276a (Davis—Bacon Act), and the metropolitan government hereby adopts those rates subject to the provisions of this chapter. (Ord. 92-210 § 1 (5-502), 1992)

**4.20.090 Prevailing wages—Rate schedules to be specification for work—Posting.**

A. Before advertising for bids or entering into any contract for the construction of any public work or improvement, the purchasing agent of the metropolitan government, or any other agency of the metropolitan government under whose jurisdiction such work is to be performed, shall ascertain from the U.S. Department of Labor the prevailing wage rates in the county for workmen in the class of work called for in such construction projects. This schedule of wages shall be attached to and made a part of the specifications for the work printed on the bidding blanks, made a part of every contract for the construction of any public works or improvements, and posted on the main employee bulletin board of other conspicuous place on each job site by the contractor.

B. In addition to the posting of the schedule of wages, the name, mailing address and telephone number of the purchasing agent of metropolitan government shall be posted in the same manner with a statement that any person may report any violations of prevailing provisions to such office. Each employer that is subject to the provisions of this section shall provide to each employee, with the first payroll check, a written document which includes the contract number of the project, the job identification or classification of the employee and the prevailing wage rate for such job. Each employer shall maintain a written acknowledgment of the receipt by each employee of such document with its payroll records. (Ord. 97-723 § 1, 1997; Ord. 92-210 § 1 (5-503), 1992)

**4.20.100 Payroll records—Contractor responsibility.**

A. Any person who may enter into any contractual agreement with the metropolitan government or any agency thereof for any public works or improvements shall, upon request, furnish the purchasing agent or the agency under whose jurisdiction such work is to be performed certified copies of payroll records, including employees' names, hours worked and rates paid, and shall maintain and preserve such payroll records for one year, and such records shall be open for inspection by the

agency under whose jurisdiction the contract is to be performed. The contractor shall supply the requested documents within five working days of receipt of the request. The purchasing agent or his designee may periodically examine the records required to be kept under this section.

B. The purchasing agent is authorized to enter into a contract or contracts with the metropolitan development and housing agency ("MDHA") pursuant to which MDHA shall perform the necessary review and investigation to determine compliance with the provisions of this chapter as requested by the purchasing agent. MDHA shall be paid an amount not to exceed its actual reasonable expenses of performance of such contract or contracts. This subsection is in no way intended to subject the metropolitan government to any provision of the Davis-Bacon Act not formally adopted by ordinance. (Ord. 97-723 §§ 2, 3, 1997; Ord. 92-210 § 1 (5-504), 1992)

**4.20.110 Violation of Title 4 provisions—Penalty.**

Each day that each employee is not paid in accordance with the provisions of this chapter shall constitute a separate offense. Any contractor found to have violated any provision hereof shall be disqualified from contracting with the government for a period of six months and, upon a second conviction shall be disqualified for a period of one year, and a third conviction, for a period of three years. Furthermore, the particular agency of the metropolitan government which awarded the contract may advertise the work and relet the contract in the same manner as the original letting. (Ord. 95-1329 § 4, 1995; Ord. 92-210 § 1 (5-505), 1992)

**4.20.120 Effect of federal action on wage determinations.**

A. The prevailing wage determination decisions shall be the only matter decided by the United States Department of Labor effecting the prevailing wages established under this title for building and construction projects of the metropolitan government. No action by the President of the United States suspending application of the Davis-Bacon Act to projects of the United States Government shall be interpreted to suspend any of the operations of this title.

B. The metropolitan government, having only adopted the prevailing wage determination, shall in no way be subject to any provision of the Davis-Bacon Act. (Ord. 92-210 § 1 (5-506), 1992)

**Chapter 4.24**  
**MODIFICATION AND TERMINATION OF**  
**CONTRACTS FOR SUPPLIES AND SERVICES**

**Sections:**

**4.24.010 Contract clauses and their administration.**

**4.24.020 Contract modification and change orders.**

**4.24.010 Contract clauses and their administration.**

A. Contract Clauses. The standards board may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance or other contract provisions as appropriate covering the following subjects:

1. The unilateral right of the metropolitan government to order in writing:

- a. Changes in the work within the scope of the contract; and
- b. Temporary stopping of the work or delaying performance; and

2. Variations occurring between estimated quantities of work in a contract and actual quantities.

B. Price Adjustments.

1. Adjustments in price pursuant to clauses promulgated under subsection A of this section shall be computed in one or more of the following ways:

- a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- b. By unit price specified in the contract or subsequently agreed upon;
- c. By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- d. In such other manner as the contracting parties may mutually agree; or

e. In the absence of agreement by the parties, by a unilateral determination by the metropolitan government of the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the metropolitan government in accordance with applicable sections of the regulations promulgated by the standards board.

C. Additional Contract Clauses. The standards board may promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in metropolitan government contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and

4. Termination of the contract in whole or in part for the convenience of the metropolitan government.

D. Modification of Clauses. The purchasing agent may vary the clauses promulgated by the standards board under subsections A and C of this section for inclusion in any particular metropolitan government contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the invitation for bids or request for proposals. (Ord. 92-210 § 1 (6-101), 1992)

**4.24.020 Contract modification and change orders.**

A. Approval by purchasing agent. Before any change, revision or modification shall be made in any contract requiring the expenditure of money or the relinquishment of rights or privileges by the metropolitan government, such change, revision or alteration shall be approved by the purchasing agent. The purchasing agent shall disapprove any change, revision or alteration of such contract if, in his opinion, the best interests of the metropolitan government require that a new procurement be initiated for the items included in the proposed change or modification. The mayor shall make the final determination if the director of any affected departments, commission, board or agency objects to the decision of the purchasing agent.

B. Approval by Mayor and Director of Law. Any changes, revisions or alterations of contracts, deeds, leases or other instruments in writing in which the metropolitan government is concerned shall be approved by the department of law, as provided by Section 8.602(e) of the Metropolitan Charter, and shall be signed by the mayor.

C. Availability of Funds. Where any change, revision or alteration of a contract in which the metropolitan government is concerned requires an expenditure of money, the director of finance or his designee must approve the change. Funds must be available or obtainable by means authorized in the Charter or in ordinances. (Ord. 92-210 § 1 (6-102), 1992)

**Chapter 4.28**  
**DISCRIMINATION IN EMPLOYMENT**

**Sections:**

**4.28.010 Equal employment opportunity requirements.**

**4.28.020 Affidavit of compliance—Contract requirements.**

**4.28.030 Violations—Penalty.**

**4.28.010 Equal employment opportunity requirements.**

A. It is declared to be the policy of the metropolitan government that any person contracting for building and construction projects or furnishing supplies or services to the metropolitan government, and to which any funds of the metropolitan government are expended, shall establish equal employment opportunities for all individuals so that no individual shall be excluded from employment by such persons because of race, creed, color, national origin, age or sex, and to ensure compliance with all applicable laws concerning the employment of individuals with disabilities.

B. Any person so contracting for building and construction projects, or furnishing supplies or services to the metropolitan government, wherein any funds of the metropolitan government may be appropriated or expended to such person, shall not subscribe to any personnel policy which permits or allows the promotion, demotion, employment, dismissal or laying off of any individual due to his race, creed, color, national origin, age or sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities. (Ord. 92-416 § 1(a, b), 1992; Ord. 92-210 § 1 (7-101), 1992)

**4.28.020 Affidavit of compliance—Contract requirements.**

A. The purchasing agent of the metropolitan government shall include in all bid specifications or invitations to bid a provision to the effect that no contract shall be entered into for building and construction projects or supplies or services unless the successful bidder submits an affidavit to the metropolitan government stating that by his employment policy, standards and practices he does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to this race, creed, color, national origin, age or sex, and that he is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

B. The purchasing agent, or other agency of the metropolitan government under whose jurisdiction such work is to be performed, shall include in the specifications to bidders or in the invitations to bid, a clause prohibiting the successful bidder from discriminating against any individual due to his race, creed, color, national origin, age or sex, and from violating applicable laws concerning the employment of individuals with disabilities. (Ord. 92-416 § 1(c, d), 1992; Ord. 92-210 § 1 (7-102), 1992)

**4.28.030 Violations—Penalty.**

Any contractor who violates the provisions of this chapter is subject to debarment or suspension pursuant to Section 4.36.020, Authority to debar or suspend of this code in addition to any contractual remedies available to the metropolitan government. (Ord. 92-210 § (7-103), 1992)

**Chapter 4.32**

**SUPPLY MANAGEMENT**

**Sections:**

<b>4.32.010</b>	<b>Inventory.</b>
<b>4.32.020</b>	<b>Disposal of surplus, obsolete or unused supplies or equipment.</b>
<b>4.32.030</b>	<b>Declaration of surplus property authorized when.</b>
<b>4.32.040</b>	<b>Notice of surplus property—Availability to metropolitan agencies.</b>
<b>4.32.050</b>	<b>Sale of surplus property or supplies—Authorized when.</b>
<b>4.32.060</b>	<b>Sale of property—Rules and regulations.</b>

**4.32.010 Inventory.**

The director of public property shall maintain an inventory of public property, supplies and equipment. He shall exercise general supervision and control over all inventories of property, supplies, and equipment, including requiring inventory control procedures to be used by using agencies and specifying information on reports to be filed by using agencies. (Ord. 92-210 § 1 (8-101), 1992)

**4.32.020 Disposal of surplus, obsolete or unused supplies or equipment.**

The purchasing agent and the director of public property administration shall establish, by rules and regulations, the procedures for determining supplies, materials, and equipment to be surplus, obsolete or unused, and by which their disposition shall be effected. Such rules and regulations shall be subject to the approval of the standards board and the mayor. (Ord. 92-210 § 1 (8-102), 1992)

**4.32.030 Declaration of surplus property authorized when.**

Whenever the director or other chief administrative officer of any department or agency, or when any board or commission of the metropolitan government determines that personal property of the metropolitan government in the custody of or used by such department, commission,

board or agency is no longer needed or suited for its purposes, the board or commission, by resolution, or the director of a department or head of an agency, shall declare such personal property surplus, and shall transfer it to the custody of the director of public property administration. (Ord. 92-210 § 1 (8-103), 1992)

**4.32.040 Notice of surplus property—  
Availability to metropolitan agencies.**

The director of public property administration, in accordance with the procedures established by regulations, shall make all surplus personal property available to the departments, boards and commissions of the metropolitan government, and shall effect the transfer of such property to the department or other agency requesting its use. (Ord. 92-210 § 1 (8-104), 1992)

**4.32.050 Sale of surplus property or supplies—  
Authorized when.**

When surplus personal property or supplies, other than school property, is not required by any department or other agency of the metropolitan government, the director of public property administration is authorized to sell such property or supplies, and the proceeds shall be deposited as directed by the director of finance. When, in the judgment of the metropolitan board of public education, any property held by it is no longer suited or needed for school purposes, the board shall, by resolution, direct the property be sold, and the proceeds from such sale shall be credited to the unappropriated school fund of the metropolitan government. (Ord. 2002-1232 § 3 (part), 2002: Ord. 92-210 § 1 (8-105), 1992)

**4.32.060 Sale of property—Rules and  
regulations.**

Surplus personal property authorized for sale under this chapter shall be sold in accordance with regulations. (Ord. 98-1386 § 1, 1998: Ord. 92-210 § 1 (8-106), 1992)

## Chapter 4.36

### LEGAL AND CONTRACTUAL REMEDIES

#### Sections:

<b>4.36.010</b>	<b>Authority to resolve protested solicitations and awards.</b>
<b>4.36.020</b>	<b>Authority to debar or suspend.</b>
<b>4.36.030</b>	<b>Authority to resolve contract and breach of contract controversies.</b>
<b>4.36.040</b>	<b>Applicability of this part.</b>
<b>4.36.050</b>	<b>Remedies prior to an award of contract.</b>
<b>4.36.060</b>	<b>Remedies after an award.</b>
<b>4.36.070</b>	<b>Creation of the procurement appeals board.</b>
<b>4.36.080</b>	<b>Procurement appeals board—Rules of procedure.</b>
<b>4.36.090</b>	<b>Procurement appeals board—Issuance of decisions.</b>
<b>4.36.100</b>	<b>Procurement appeals board—Jurisdiction.</b>
<b>4.36.110</b>	<b>Protest of solicitations or awards.</b>
<b>4.36.120</b>	<b>Suspension or debarment proceedings.</b>

#### **4.36.010 Authority to resolve protested solicitations and awards.**

A. Right to Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the purchasing agent. The protest shall be submitted in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto.

B. Authority to resolve protests. The purchasing agent shall have the authority to settle and resolve a protest of an actual or prospective aggrieved bidder, offeror or contractor concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations promulgated by the standards board.

C. Decision. If the protest is not resolved by mutual agreement, the purchasing agent shall promptly issue a decision in writing. The decision shall:

1. State the reason for the action taken; and
2. Inform the protestant of its right to administrative review as provided in this chapter.

D. Notice of Decision. A copy of the decision under subsection C of the section shall be mailed or otherwise furnished immediately to the protestant and any other interested party.

E. Finality. A decision under subsection C of this section shall be final and conclusive, unless any person adversely affected by the decision appeals administratively to

the procurement appeals board in accordance with Section 4.36.110, protest of solicitations or awards; or

F. Stay of Procurements During Protests. In the event a timely protest under subsection A of this section or under Section 4.36.100, jurisdiction of procurement appeals board, the metropolitan government shall not proceed further with the solicitation of or with the award of the contract until the purchasing agent, after consultation with the head of the using agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the metropolitan government. (Ord. 92-210 § 1 (9-101), 1992)

#### **4.36.020 Authority to debar or suspend.**

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consultation with the using agency and the director of law, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The purchasing agent, after consulting with the using agency and the director of law, shall have the authority to suspend a person from consideration for award of contracts for up to three months if there is probable cause for debarment. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the standards committee.

B. Causes for Debarment or Suspension. The causes for debarment or suspension include, but are not limited to, the following:

1. Conviction of commission of a criminal offense as incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a metropolitan government contractor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set out in regulation of the standards board, of a character which is regarded by the purchasing agent to be so serious as to justify debarment actions;
5. Violation of the ethical standards set forth in Chapter 4.48, ethics in public contracting.
6. Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a metropolitan government contractor, including debarment by another governmental entity.

C. Decision. The purchasing agent shall issue a written decision to debar or suspend. The decision shall:

1. State the reasons for the action taken; and
2. Inform the debarred or suspended person involved of its rights to administrative review as provided in this chapter.

D. Notice of Decision. A copy of the decision under subsection C of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other interested party.

E. Finality of Decision. A decision under subsection C of this section shall be final and conclusive, unless the debarred or suspended person appeals administratively to the procurement appeals board in accordance with Section 4.36.120, suspension or debarment proceedings. (Ord. 92-210 § 1 (9-102), 1992)

#### **4.36.030 Authority to resolve contract and breach of contract controversies.**

A. Applicability. This section applies to controversies between the metropolitan government and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

B. Authority. The purchasing agent is authorized, prior to commencement of an action in court concerning the controversy, to settle and resolve a controversy described in subsection A of this section. This authority shall be exercised in accordance with regulations promulgated by the standards board.

C. Decision. If such a controversy is not resolved by mutual agreement, the purchasing agent shall promptly issue a decision in writing. The decision shall state the reason for the action taken.

D. Notice of Decision. A copy of the decision under subsection C of this section shall be mailed or otherwise furnished immediately to the contractor.

E. Failure to Render Timely Decision. If the purchasing agent does not issue the written decision required under subsection C of this section within one hundred and twenty days after a written request for a final decision or within such longer period as may be agreed upon by the parties, the contractor may proceed as if an adverse decision had been received. (Ord. 92-210 § 1 (9-103), 1992)

#### **4.36.040 Applicability of Sections 4.36.040 through 4.36.060.**

The provisions of this Sections 4.36.040 through 4.36.060 apply where it is determined administratively, or upon administrative review, that a solicitation or award of a contract is in violation of law. (Ord. 92-210 § 1 (9-201), 1992)

#### **4.36.050 Remedies prior to an award of contract.**

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be:

A. Canceled; or

B. Revised to comply with the law. (Ord. 92-210 § 1 (9-202), 1992)

#### **4.36.060 Remedies after an award of contract.**

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

A. If the person awarded the contract has not acted fraudulently or in bad faith:

1. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the metropolitan government; or

2. The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to termination;

B. If the person awarded the contract has acted fraudulently or in bad faith:

1. The contract may be declared null and void; or

2. The contract may be ratified and affirmed if such action is in the best interests of the metropolitan government, without prejudice to the metropolitan government's rights to such damages as may be appropriate. (Ord. 92-210 § 1 (9-203), 1992)

#### **4.36.070 Procurement appeals board—Establishment and membership.**

There is hereby established a procurement appeals board to be composed of a chairperson and at least two other members, but not more than five members. The chairperson and members of the board shall be appointed by the mayor. The members of the Board may be directors, department heads, or other officials of metropolitan government in similar positions as determined by the mayor. The mayor, by executive order, shall determine the size of the Board and the qualifications and terms of members, if any. (Ord. 92-210 § 1 (9-301), 1992)

#### **4.36.080 Procurement appeals board—Rules of procedure.**

The procurement appeals board shall adopt rules of procedure of which, to the fullest extent possible, will provide for the expeditious resolution of controversies. (Ord. 92-210 § 1 (9-301), 1992)

**4.36.090 Procurement appeals board—  
Issuance of decisions.**

Acting by one or more of its members, the procurement appeals board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and the purchasing agent. (Ord. 92-210 § 1 (9-303), 1992)

**4.36.100 Procurement appeals board—  
Jurisdiction.**

The Board shall have jurisdiction to review and determine de novo any appeal by an aggrieved party from a determination by the purchasing agent or a designee which is authorized by:

A. Section 4.36.010, authority to resolve protested solicitations and awards; and

B. Section 4.36.020, authority to debar or suspend. (Ord. 92-210 § 1 (9-304), 1992)

**4.36.110 Protest of solicitations or awards.**

A. Scope. This section applies to an appeal addressed to the board of a decision under Section 4.36.020(C), authority to resolve protested solicitations and awards, decision.

B. Time Limitations on Filing a Protest or an Appeal. For an appeal under this section, the aggrieved person shall file an appeal within seven days of receipt of a decision under Section 4.36.010(C), authority to resolve protested solicitations and awards, decision.

C. Decision. On any appeal under this section, the board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, this code, regulations, and the terms and conditions of the solicitation. (Ord. 92-210 § 1 (9-305), 1992)

**4.36.120 Suspension or debarment  
proceedings.**

A. Scope. This section applies to a review by the procurement appeals board of a decision under Section 4.36.020 authority to debar or suspend.

B. Time Limitation on Filing an Appeal. The aggrieved person shall file its appeal with the board within thirty days of the receipt of a decision under Section 4.36.020(C), authority to debar or suspend, Decision.

C. Decision. The board shall promptly decide whether, or the extent to which, the debarment or suspension was in accordance with the Constitution, statutes, this code, regulations, and the best interest of the metropolitan government, and was fair. The board may order the reinstatement of any person previously suspended or debarred. (Ord. 92-210 § 1 (9-306), 1992)

**Chapter 4.40**

**SPECIFIC PROCEDURES**

**Sections:**

**4.40.010 Availability of funds prerequisite to purchasing.**

**4.40.020 Written requisition required.**

**4.40.030 Surety bonds and insurance.**

**4.40.040 Regulations concerning use of recycled materials.**

**4.40.050 Recycled paper.**

**4.40.010 Availability of funds prerequisite to purchasing.**

No purchase order shall be issued or contract executed, nor shall any other agreements purporting to obligate the metropolitan government be entered into, without the written certificate of the director of finance, or such other of his personnel as he may designate, that there is a sufficient unencumbered appropriation and allotment balance to cover the obligation. (Ord. 92-210 § 1 (10-101), 1992)

**4.40.020 Written requisition required.**

All purchases of supplies, services, and construction shall be pursuant to a written requisition from the head of the office, department or agency whose appropriation will be charged therewith. (Ord. 92-210 § 1 (10-102), 1992)

**4.40.030 Surety bonds and insurance.**

The purchasing agent shall procure surety bonds and other types of bonds and insurance through sealed competitive bidding. The metropolitan council shall approve the plan for fire and extended coverage insurance by resolution. The resolution shall also include the name of the low bidder or bidders for the insurance. (Ord. 92-210 § 1 (10-103), 1992)

**4.40.040 Regulations concerning use of recycled materials.**

The standards board is authorized to adopt regulations encouraging or requiring the purchase of recycled products. Such regulations may identify specific types or classes of purchases where recycled products are readily available. (Ord. 92-210 § 1 (10-201), 1992)

**4.40.050 Recycled paper.**

A. Declaration of policy. It is declared to be the policy of the metropolitan government that the metropolitan government and all its agencies use recycled paper to the extent feasible and possible.

B. Implementation by Purchasing Agent—Goals. The purchasing agent shall implement a policy of purchasing paper and paper products that are produced or manufactured from recycled paper for the use of the various agencies and departments of metropolitan government. “Recycled paper” means all paper and paper products that contain a minimum of ten post-consumer waste but meet the government’s performance and other requirements. This policy recognizes that the percentage of recovered materials used in a particular type of paper or product category can vary significantly.

C. Report. The purchasing agent shall annually, by August 31st, report in writing to the standards board and the council concerning his efforts toward the goals and the results. (Ord. 2002-1232 § 3 (part), 2002; Amdt. 3 to Ord. 92-210, 4/7/92; Ord. 92-210 § 1 (10-202), 1992)



## Chapter 4.44

### ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

#### Sections:

- 4.44.010**      **Definitions of terms used in this article.**
- 4.44.020**      **Statement of policy and its implementation.**
- 4.44.030**      **Mandatory duties of the purchasing agent.**
- 4.44.040**      **Discretionary duties of the purchasing agent.**
- 4.44.050**      **Report to the standards board and the council.**
- 4.44.060**      **Compliance with federal requirements.**

#### **4.44.010**      **Definitions of terms used in this article.**

The standards board shall promulgate regulations establishing detailed definitions of the following terms using, in addition to the criteria set forth in this section, such other criteria as it may deem desirable, including the number of employees, the dollar volume of business, and the comparative size with other businesses in the same or a similar field. The regulations may distinguish between industries to the extent necessary to reflect the differing characteristics of each particular industry. As used in this chapter:

“Disadvantaged business” means a small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages or disability.

“Small business” means a United States business which is independently owned and operated and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation. (Ord. 92-416 § 2, 1992; Ord. 92-210 § 1 (11-101), 1992)

#### **4.44.020**      **Statement of policy and its implementation.**

A. Statement of Policy. It shall be the policy of the metropolitan government to assist small and disadvantaged businesses in learning how to do business with the metropolitan government. It is further the policy of metropolitan government that a fair proportion of government purchases be made from small and disadvantaged businesses. The standards board shall annually determine the amount of the fair proportion to be purchased from small businesses; provided, however, that said proportion for fiscal year 1992-93 shall be fifteen percent.

B. Implementation. The purchasing agent shall implement the policy set forth in subsection A of this section in accordance with regulations promulgated by the standards board under this chapter. The standards board may develop procedures for certification for eligibility for participation in this program and procedures for decertification. The board may further develop procedures to assure that a fair proportion of purchases are made from small businesses, including but not limited to identification of types of purchases or contracts to be bid among certified small businesses and the establishment of preferences. (Ord. 92-210 § 1 (11-201), 1992)

#### **4.44.030**      **Mandatory duties of the purchasing agent.**

A. Assistance Within metropolitan government agencies. Where feasible, the purchasing agent shall provide appropriate staff who shall be responsible to the purchasing agent and who shall serve within designated metropolitan government agencies to assist metropolitan government small and disadvantaged businesses in learning how to do business with the metropolitan government.

B. Special Publications. The purchasing agent will give special publicity to procurement procedures and issue special publications designed to assist small and disadvantaged businesses in learning how to do business with the metropolitan government.

C. Source Lists. The purchasing agent shall compile, maintain and make available source lists of small and disadvantaged businesses for the purpose of encouraging procurement from small and disadvantaged businesses.

D. Solicitation Mailing Lists. To the extent deemed by such officer to be appropriate and as may be required by regulation, the purchasing agent shall include small and disadvantaged businesses on solicitation mailing lists.

E. Solicitation of Small and Disadvantaged Businesses. The purchasing agent shall assure that small and disadvantaged businesses are solicited on each procurement under one thousand dollars and on each other procurement for which such businesses may be suited.

F. Training Programs. The purchasing agent shall develop special training programs to be conducted by the metropolitan government to assist small and disadvantaged businesses in learning how to do business with the metropolitan government. (Ord. 92-210 § 1 (11-202), 1992)

#### **4.44.040**      **Discretionary duties of the purchasing agent.**

A. Bonding. Notwithstanding other provisions of this the purchasing agent may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from small and disadvantaged businesses.

B. Progress Payments. The purchasing agent may make such special provisions for progress payments as such officer may deem reasonably necessary to encourage procurement from small and disadvantaged businesses. (Ord. 92-210 § 1 (11-203), 1992)

**4.44.050 Report to the standards board and the council.**

The purchasing agent shall annually, before June 1st, report in writing to the standards board and the council concerning the awarding of contracts to small and disadvantaged businesses during the preceding twelve months. The purchasing agents shall provide interim reports to the metropolitan clerk and directly to any member of council who so requests at least quarterly. (Ord. 92-210 § 1 (11-204), 1992)

**4.44.060 Compliance with federal requirements.**

Where a procurement involves the expenditure of federal assistance or contract funds, the purchasing agent shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Title 4. (Ord. 92-210 § 1 (11-301), 1992)

**Chapter 4.48  
ETHICS IN PUBLIC CONTRACTING**

**Sections:**

- 4.48.010 Definitions.**
- 4.48.020 Statement of policy.**
- 4.48.030 General standards of ethical conduct.**
- 4.48.040 Criminal sanctions.**
- 4.48.050 Employee conflict of interest.**
- 4.48.060 Employee disclosure requirements.**
- 4.48.070 Gratuities and kickbacks.**
- 4.48.080 Prohibition against contingent fees.**
- 4.48.090 Restrictions on employment of present or former employees.**
- 4.48.100 Use of official information.**
- 4.48.110 Civil and administrative remedies against employees who breach ethical standards.**
- 4.48.120 Civil and administrative remedies against nonemployees who breach ethical standards.**
- 4.48.130 Recovery of value transferred or received in breach of ethical standards.**
- 4.48.140 Waiver by procurement appeals board.**

**4.48.010 Definitions.**

“Blind trust” means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

“Conspicuously” means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have notice of it.

“Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, preparation of any part of the purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or any other advisory capacity.

“Financial interest” means:

A. Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than five hundred dollars per year, or its equivalent;

B. Ownership of such interest in any property or any business as may be specified by the procurement appeals board; or

C. Holding any compensated or uncompensated position in a business, such as an officer, director, trustee, partner or employee.

“Gratuity” means any gift, service, favor, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value, unless consideration of substantially equal or greater value is received.

“Immediate family” means a spouse, children, parents, brothers and sisters and such other relatives as may be designated by the procurement appeals board.

“Official information” means any information which was obtained through or in connection with an employee’s government employment and which has not been made available to the general public.

“Official responsibility” means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove or otherwise direct metropolitan government action.

“Purchase request” means that document whereby a using agency requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply and information supplied for the making of any written determination required by this code. (Ord. 92-210 § 1 (12-101), 1992)

#### **4.48.020 Statement of policy.**

A. Public employment is a public trust. It is the policy of the metropolitan government to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the metropolitan government. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

B. Public employees must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the metropolitan government procurement organization.

C. To achieve the purpose of this Article, it is essential that those doing business with the metropolitan government also observe the ethical standards prescribed herein. (Ord. 92-210 § 1 (12-201), 1992)

#### **4.48.030 General standards of ethical conduct.**

A. General Ethical Standards for Employees. Each employee of the metropolitan government shall avoid any action, whether or not specifically prohibited by this code, which might result in, or create the appearance of:

1. Using public office for private gain;
2. Giving preferential treatment to any person;
3. Impeding government efficiency or economy;
4. Losing complete independence or impartiality;
5. Making a Metropolitan government decision outside of official channels; or
6. Affecting adversely the confidence of the public in the integrity of the government.

B. Specific Standards. In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in Section 4.48.050, employee conflict of interest; Section 4.48.060, Employee disclosure requirements; Section 4.48.070, Gratuities and kickbacks; Section 4.48.080, Prohibition against contingent fees; Section 4.48.090, Restrictions on employment of present and former employees and Section 4.48.100, Use of confidential information.

C. General Ethical Standards for Nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section and Sections 4.48.050 through 4.48.100 of this chapter is also a breach of ethical standards. (Ord. 92-210 § 1 (12-202), 1992)

#### **4.48.040 Criminal sanctions.**

To the extent that violations of the ethical standards of conduct set forth in Sections 4.48.020 through 4.48.100

constitute violations of the criminal laws of this state, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this chapter. (Ord. 92-210 § 1 (12-203), 1992)

#### **4.48.050 Employee conflict of interest.**

A. Conflict of Interest. It shall be a breach of ethical standards for an employee to participate directly or indirectly in a procurement when the employee knows that:

1. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
2. Business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
3. Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment involved in the procurement.

B. Financial interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made known to the procurement appeals board.

C. Discovery of Actual or Potential Conflict of Interest—Disqualification and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the procurement appeals board in accordance with Section 4.48.140, Waiver by procurement appeals board, for a waiver. (Ord. 92-210 § 1 (12-204), 1992)

#### **4.48.060 Employee disclosure requirements.**

A. Disclosure of Benefit Received from Contract. Any employee who has, or obtains any benefit from, any metropolitan government contract with a business in which the employee, the employee's spouse or the employee's child has a financial interest shall report such benefit to the procurement appeals board; provided, however, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

B. Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report such benefit to the procurement appeals board, is in breach of the ethical standards of this section. (Ord. 92-210 § 1 (12-205), 1992)

#### **4.48.070        Gratuities and kickbacks.**

A.    Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor.

B.    Kickback. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

C.    Contract Clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor. (Ord. 92-210 § 1 (12-206), 1992)

#### **4.48.080        Prohibition against contingent fees.**

A.    Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a metropolitan government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

B.    Representation of Contractor. Every person, before being awarded a metropolitan government contract, shall represent in writing, that such person has not retained anyone in violation of subsection a of this section. Failure to do so constitutes a breach of ethical standards.

C.    Contract Clause. The representation prescribed in subsection B of this section shall be conspicuously set forth in every contract and solicitation therefor. (Ord. 92-210 § 1 (12-207), 1992)

#### **4.48.090        Restrictions on employment of present or former employees.**

A.    Contemporaneous Employment Prohibited. Except as may be permitted by regulations or rulings of the procurement appeals board, it shall be a breach of ethical

standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

B.    Restrictions on Former Employees Connected with Their Former Duties.

1.    Permanent Disqualification of Former Employees Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as principal, or as an agent for anyone other than the metropolitan government, in connection with any:

- a.    Judicial or other proceeding, application, request for a ruling or other determination;
- b.    Contract;
- c.    Claim; or
- d.    Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise while an employee, where the metropolitan government is a party or has a direct or substantial interest.

2.    One-Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as principal or as an agent for anyone other than the metropolitan government, in connection with any:

- a.    Judicial or other proceeding, application, request for a ruling or other determination;
- b.    Contract;
- c.    Claim; or
- d.    Charge or controversy, in matters which were within the former employee's official responsibility, where the metropolitan government is a party or has a direct or substantial interest.

C.    Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the metropolitan government, in connection with any:

1.    Judicial or other proceeding, application, request for ruling or other determination;
2.    Contract;
3.    Claim; or
4.    Charge or controversy in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise or which is the

subject of the employee's official responsibility, where the metropolitan government is a party or has a direct and substantial interest.

D. Selling to the metropolitan government After Termination of Employment is Prohibited.

1. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed eighteen thousand dollars, to engage in selling or attempting to sell supplies, services or construction to the metropolitan government for six months following the date employment ceased.

2. The term "sell" as used herein means signing a bid, proposal or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating or discussing changes in specifications, price, cost allowance or other terms of a contract; settling disputes concerning performance of a contract or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person; provided, however, that this section is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with the metropolitan government; nor shall a former employee be precluded from serving as a consultant to the metropolitan government. (Ord. 92-210 § 1 (12-208), 1992)

#### **4.48.100 Use of official information.**

It shall be a breach of ethical standards for any employee or former employee knowingly to use, disclose or allow the use of official information for the purpose of furthering the private interest or personal profit of any person, including the employee. (Ord. 92-210 § 1 (12-209), 1992)

#### **4.48.110 Civil and administrative remedies against employees who breach ethical standards.**

A. Existing Remedies Not Impaired. Civil and administrative remedies against employees which are in existence on the effective date of the ordinance codified in this title shall not be impaired.

B. Supplemental Remedies. In addition to existing remedies for breach of ethical standards of this chapter or regulations promulgated hereunder, the procurement appeals board may recommend any one or more of the following:

1. Oral or written warnings or reprimands;
2. Suspension with or without pay for specified periods of time; and
3. Termination of employment.

C. Right to Recover from Employee Value Received in Breach of Ethical Standards. The value of anything received by an employee in breach of the ethical standards of this chapter or regulation promulgated hereunder shall be recoverable by the metropolitan government as provided in section 4.48.130 Recovery of value transferred or received in breach of ethical standards. (Ord. 92-210 § 1 (12-301), 1992)

#### **4.48.120 Civil and administrative remedies against nonemployees who breach ethical standards.**

A. Existing Remedies Not impaired. Civil and administrative remedies against nonemployees which are in existence on the effective date of the ordinance codified in this title shall not be impaired.

B. Supplemental Remedies. In addition to existing remedies for breach of ethical standards of this chapter or regulations promulgated hereunder, the procurement appeals board may impose any one or more of the following:

1. Written warnings or reprimands;
2. Termination of transactions; and
3. Debarment or suspension from being a contractor or subcontractor under metropolitan government contracts.

C. Right to Recover from Nonemployee Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of the ethical standards of this chapter or regulations promulgated hereunder by a non-employee shall be recoverable by the metropolitan government as provided in Section 4.48.130, Recovery of value transferred or received in breach of ethical standards.

D. Right of the Metropolitan Government to Debar or Suspend. Debarment or suspension may be imposed by the purchasing agent or procurement appeals board in accordance with the procedure set forth in Section 4.36.020, Authority to debar or suspend, for breach of ethical standards of this chapter, provided that such action may not be taken without the concurrence of the director of law. (Ord. 92-210 § 1 (12-302), 1992)

#### **4.48.130 Recovery of value transferred or received in breach of ethical standards.**

A. General Provisions. The value of anything transferred or received in breach of the ethical standards of this chapter or regulations promulgated hereunder by an employee or a nonemployee may be recovered from both the employee and the nonemployee.

B. Recovery of Kickbacks by the metropolitan government. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher-tier subcontractor in connection with the award of a subcontract or order

thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the metropolitan government and will be recoverable from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties. (Ord. 92-210 § 1 (12-303), 1992)

**4.48.140        Waiver by procurement appeals board.**

On written request of an employee, the procurement appeals board may grant an employee a written waiver from the application of Section 4.48.050, Employee conflict of interest and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interest of the metropolitan government so requires or when the ethical conflict is insubstantial or remote. (Ord. 92-210 § 1 (12-401), 1992)